

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57171; File No. 4-534)

January 18, 2008

Joint Industry Plan; American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, New York Stock Exchange LLC, and NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 to the Proposed National Market System Plan for the Selection and Reservation of Securities Symbols

I. Introduction

On March 23, 2007, pursuant to Rule 608 of Regulation NMS under the Act¹ (“Rule 608”), American Stock Exchange LLC (“Amex”), New York Stock Exchange LLC (“NYSE”), and NYSE Arca, Inc. (“NYSE Arca”) filed with the Commission a proposed plan for the purpose of the selection and reservation of securities symbols (“Three-Characters Plan”). On March 23, 2007, The Nasdaq Stock Market, Inc. (“Nasdaq”), National Association of Securities Dealers, Inc. (“NASD”) (n/k/a Financial Industry Regulatory Authority, Inc. (“FINRA”)),² National Stock Exchange, Inc. (“NSX”), and Philadelphia Stock Exchange, Inc. (“Phlx”) also filed with the Commission a proposed plan for the purpose of the selection and reservation of securities symbols (“Five-Characters Plan”). On April 23, 2007, the Chicago Stock Exchange, Inc. (“CHX”), Nasdaq, NASD, NSX, and Phlx filed a supplement to the Five-Characters Plan.³ The

¹ 17 CFR 242.608.

² On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

³ In the Supplement, CHX joined as a party proposing the Five-Characters Plan. In addition, the Supplement contained a revised version of the Five-Characters Plan. The parties to the Five-Characters Plan revised the plan as follows: (i) changed the definition of securities for which an SRO must maintain facilities for the quoting and trade reporting of such securities in order to be party to the plan and corresponding changes

proposed plans were published for comment in the Federal Register on July 17, 2007.⁴

On August 1, 2007, Amex, Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC (“ISE”), NYSE, and NYSE Arca filed Amendment No. 1 to the proposed Three-Characters Plan (“Amendment No. 1”). The Commission requests comment on Amendment No. 1 from interested persons.

II. Description of Amendment No. 1

Amendment No. 1 makes the following modifications to the proposed Three-Characters Plan: (1) adds two new parties to the proposed plan; (2) amends the symbol portability provision of the proposed plan with respect to three-character symbols; (3) clarifies that the Three-Characters Plan covers reservations of one-, two-, and three-character symbols for options under the OPRA Plan; and (4) minor, non-substantive, technical changes, including re-naming the plan administrator.

A. New Parties to the Plan

The Three-Characters Plan was originally submitted by Amex, NYSE, and NYSE Arca. The Three-Characters Plan would grant the plan participants the following symbol reservation rights: (1) NYSE and Amex each would receive the right to reserve 200 symbols without any time or other limitations or restrictions as “perpetual reservations” and 1,500 symbols for a limited time of 24 months as “limited-time reservations” (2) all other parties would receive the right to reserve 40 perpetual reservations, and (3) NYSE Arca would receive the right to reserve

throughout the plan and (ii) deleted the statement that new parties to the plan would pay an equal share of all development costs.

⁴ See Securities Exchange Act Release No. 56037 (July 10, 2007), 72 FR 39096 (“Joint Industry Plan Notice”).

500 limited-time reservations.⁵ Amendment No. 1 adds CBOE and ISE as signatories to, and participants in, the proposed Three-Characters Plan. In addition, Amendment No. 1 modified the proposed limited-time reservation provision of the plan to grant CBOE the right to reserve 500 limited-time reservations and ISE the right to reserve 200 limited-time reservations.⁶

The Commission requests commenters' views on the amended provisions to the proposed Three-Characters Plan that add CBOE and ISE as parties to the plan and that would grant them the limited-time reservation rights described above. The Commission also requests commenters' views on the number of symbols a self-regulatory organization ("SRO") should be permitted to reserve as perpetual reservations or limited-time reservations. In particular, the Commission requests commenters' view on any basis on which it would be appropriate for certain SROs to receive more reservations than other SROs. For example, should there be a distinction in the number of limited-time reservations that non-primary listing markets receive? If so, what factors should be taken into account in allotting the number of limited-time reservations? Finally, the Commission requests commenters' views on how these amended provisions would affect new listing markets.

B. Symbol Portability

The proposed Three-Characters Plan originally provided that, if an SRO lists a security that transferred from another SRO, the SRO from which the issuer delisted its security would have the right to the symbol for that security, unless it consents to the transfer of the symbol to the other SRO. If the SRO to which the issuer transferred its listing believes there is a compelling business reason why it should have the rights to the symbol (if it is a two- or three-

⁵ See Joint Industry Plan Notice supra note 4, at 39099-100 for additional details regarding perpetual reservations and limited-time reservations.

⁶ See amended Section IV(b)(1)(B) of the Three-Characters Plan.

character symbol, but not a one-character symbol), such SRO could submit to the Processor the determination of which SRO shall have the rights in that symbol.⁷ The Processor could only grant the rights in the symbol to the new SRO if the Processor determines that such SRO's business reasons for obtaining such rights substantially outweigh the business needs of the other SRO to that symbol. The Processor's decision would be final and not subject to appeal.

Amendment No. 1 modifies this proposed portability provision with respect to three-character symbols. Specifically, an SRO to which a security that uses a three-character symbol transfers its listing would have the rights to that three-character symbol,⁸ unless, in the new SRO's discretion, it consents to allowing the former SRO to retain the symbol. The participants to the Three-Character Plan noted that Amendment No. 1 would comport the Three-Characters Plan with a Nasdaq rule recently approved by the Commission, which permits an issuer that has traded under a three-character symbol to continue to use that three-character symbol if the issuer moves its listing to Nasdaq.⁹

The Commission requests comment on the change in Amendment No. 1 regarding the portability of a three-character symbol to a new listing market when an issuer transfers its listing. When an issuer moves its listing to a new listing market, should either the former listing market or the new listing market retain the right to use the issuer's symbol? How would awarding the rights to the symbol to the former listing market affect competition? How would awarding such

⁷ The Three-Characters Plan would not permit disputes over one-character symbols to be submitted to the Processor.

⁸ The new SRO would be required to use the three-character symbol to identify the security transferred to its market.

⁹ See Amendment No. 1, Cover Letter at 2. See also Securities Exchange Act Release No. 56028 (July 9, 2007), 72 FR 38639 (July 13, 2007) (SR-NASDAQ-2007-031) (approving a rule change to allow a company that transfers its listing to Nasdaq to retain its three-character symbol).

rights to the new listing market affect competition? Finally, the Commission requests comment on whether one- and two-character symbols should be subject to the same portability process as three-character symbols.

C. Covered Symbols

The proposed Three-Characters Plan originally stated that the plan was intended to be the exclusive means of allocating and using symbols of one-, two-, or three-characters, and none of such one-, two-, or three-character symbols were to be allocated or used for securities other than those reflected on “Network A” or “Network B” as those terms are defined in the Consolidated Tape Association Plan (“CTA Plan”).¹⁰ The original Three-Characters Plan also stated that its Symbol Reservation System would cover the allocation of all symbols used to common stocks, other securities or other information disseminated to the public through the facilities operated by, or pursuant to, among other plans, the Options Price Reporting Authority (“OPRA”).

Amendment No. 1 amends Section I(b) of the proposed Three-Characters Plan to state that the proposed plan is intended to be the exclusive means of allocating and using symbols of one-, two-, or three-characters for, among other securities, options under OPRA. In addition, Amendment No. 1 revises Section I(b) of the Three-Characters Plan to state that, in the case of “listed equity securities” (as Rule 600(b)(34) of Regulation NMS defines that term) no one-, two-, or three-character symbols would be allocated or used other than for “Network A” or “Network B” “Eligible Securities.”

The Commission requests comment on the amended provision regarding the proposed Three-Characters Plan’s scope. In particular, the Commission requests comment on whether it is appropriate that the proposed scope of the Three-Characters Plan include options. Should the

¹⁰ See Section I(b) of the original Three-Characters Plan.

Commission approve a plan solely covering equity security symbols or should both equity and option security symbols be covered? Are there other matters with respect to the scope of the plans that commenters believe the Commission should consider? In particular, should only root symbols be covered or should suffixes be included as well?

D. Name of the Plan Administrator

Amendment No. 1 also made a number of minor, non-substantive technical changes, including modifying the name for the plan administrator. The proposed Three-Characters Plan originally referred to the plan administrator as the “International Symbols Reservation Authority (“ISRA”).” Amendment No. 1 renamed the authority the “Intermarket Symbols Reservation Authority (“ISRA”).” The Commission requests comment on the name of the plan administrator.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment No. 1 is consistent with the Act. The Commission invites comments on whether the foregoing assures fair competition among all parties, including new listing markets. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-534 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-534. The file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro/nms.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plans that are filed with the Commission, and all written communications relating to the proposed plans between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-534 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Nancy M. Morris
Secretary